

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM JAMES EDGAR

Claimant

VS.

EATON CORPORATION

Respondent

Self-Insured

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Docket No. 1,012,893

ORDER

Claimant appeals the April 4, 2005 Award of Administrative Law Judge Bruce E. Moore. Claimant was awarded benefits for a 50 percent impairment of function to the right lower extremity for injuries suffered to claimant's knee on February 19, 2001, the stipulated date of accident. The Appeals Board (Board) heard oral argument on July 12, 2005.

APPEARANCES

Claimant appeared by his attorney, Scott J. Mann of Hutchinson, Kansas. Respondent, a qualified self-insured, appeared by its attorney, P. Kelly Donley of Wichita, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the ALJ.

ISSUES

What is the nature and extent of claimant's injury? More particularly, did claimant only suffer an injury to his right lower extremity, which impairment would then be controlled by K.S.A. 44-510d? Or did claimant suffer additional aggravation to his low back and/or left knee as a result of the injuries and subsequent altered gait, which would then entitle him to a permanent partial general disability under K.S.A. 44-510e?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record contained herein, the Board finds the Award of the ALJ should be affirmed.

Claimant suffered accidental injury on February 19, 2001, when he slipped and fell, striking his right knee. Respondent does not dispute the fact that claimant suffered the accidental injury or the fact that he suffered a trauma to his right knee. However, claimant alleges that as a result of an altered gait, he has suffered additional injuries to his left knee and low back. Respondent disputes claimant's entitlement to any benefits for the left knee and low back from this injury.

The Award of the ALJ sets out detailed findings of fact and conclusions of law. It is unnecessary for the Board to repeat those herein. The Board adopts those findings and conclusions as its own.

The significant dispute in this matter exists over whether claimant's injury is limited to his right knee or extends to the low back and the left knee. The ALJ found claimant's injury was limited to the right knee only based upon the testimony of orthopedic surgeon Tariq Bin Masud Niazi, M.D. Dr. Niazi was claimant's treating physician, first seeing claimant on April 29, 2002. After examinations, including MRIs, claimant underwent two right knee surgeries, the first on May 28, 2002, and the second on September 19, 2002. Claimant was last examined by Dr. Niazi on November 4, 2002, with a subsequent referral by respondent to board certified orthopedic surgeon Kenneth A. Jansson, M.D. Dr. Jansson examined claimant on December 16, 2002, at which time claimant had complaints to his right knee, with no mention of his left knee or low back. Dr. Jansson, after examining recent x-rays, determined claimant had a degenerative knee with bone-on-bone arthrosis, determining that claimant needed a total knee replacement. Claimant was then referred to Dr. Schurman, who agreed that a total knee replacement was necessary. However, as claimant stood 5 foot 7 inches tall and weighed nearly 400 pounds, Dr. Schurman determined that claimant would not be a good surgical candidate until claimant lost substantial amounts of weight. Claimant did ultimately lose some weight, weighing between 320 and 330 pounds at the time of the regular hearing, but the evidence in the record indicated that it would be in claimant's best interest to be below 300 pounds for the surgery. At the time of the regular hearing, claimant had not undergone the surgery, although that potential remains for the future.

Claimant was referred by his attorney for an independent medical examination with board certified neurosurgeon Paul S. Stein, M.D., on November 21, 2003. At that time, claimant displayed symptoms to his right knee and also alleged problems with his low back and left knee. Dr. Stein opined claimant had a medial meniscus tear of the right knee undergoing multiple surgeries. He found, while there were symptoms to the left knee, he did not believe any impairment was necessary. As to the back, Dr. Stein found a chronic strain with limited range of motion. Pursuant to the fourth edition of the *AMA Guides*,¹

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are to the fourth edition of the *Guides* unless otherwise noted.

he assigned claimant a 3 percent impairment to the body as a whole for the range of motion limitations.

Claimant was referred by his attorney to Philip R. Mills, M.D., board certified in physical medicine, for an examination on July 14, 2004. At that time, claimant continued with complaints to his right knee, right hip, low back and left knee. Dr. Mills diagnosed medial meniscus tear in the right knee post two surgeries, with severe degenerative conditions in the right knee. He also diagnosed left knee pain and right-sided back pain. Dr. Mills found a normal range of motion, which, pursuant to the *AMA Guides*, would result in a zero percent impairment to claimant. Dr. Mills also found that claimant suffered from lumbar lordosis, a condition not diagnosed by Dr. Stein. Based upon the lumbar lordosis, Dr. Mills found claimant to have a 3 percent impairment to the body as a whole for the low back.

Claimant reported no left knee or low back pain to either Dr. Jansson or Dr. Niazi, with the first report of low back problems being the November 2003 examination by Dr. Stein. Claimant's last day of employment with respondent was August 29, 2002. Therefore, Dr. Stein's examination did not occur for approximately 15 months after claimant's employment with respondent ended.

The ALJ determined, and the Board agrees, that claimant has proven injury to his right knee, but failed to prove a work-related aggravation to his low back or left knee with any permanency associated with either. The impairment ratings of Dr. Mills and Dr. Stein, while being identical, are based upon totally different diagnoses. Dr. Stein found limited range of motion, which Dr. Mills did not find. Dr. Mills, on the other hand, found lumbar lordosis and a minimally elevated pelvis on the left, which Dr. Stein did not find. Additionally, the fact that claimant has never asked for nor received any treatment for his low back convinces the Board that, while claimant may have symptoms, the medical evidence in this record does not support a finding that claimant's low back or left knee were injured by the February 19, 2001 accident or any resulting altered gait.

With regard to the nature and extent of claimant's injury, the ALJ determined that claimant had suffered a 50 percent functional impairment to the right lower extremity based upon the opinions of Dr. Stein and Dr. Mills. Additionally, Dr. Niazi acknowledged that he had no reason to dispute the functional impairment rating determined by those two doctors. The Board, therefore, affirms the ALJ's determination that claimant has suffered a 50 percent impairment to the right lower extremity.

The ALJ went on to determine, although unnecessarily, both task and wage loss pursuant to K.S.A. 44-510e. While the Board acknowledges the numbers generated by the ALJ are accurate and supported by the record, in this instance, that determination is rendered unnecessary by the limitations of K.S.A. 44-510d.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated April 4, 2005, should be, and is hereby, affirmed, and claimant is awarded a 50 percent permanent partial impairment of function to the right lower extremity for the injuries suffered on February 19, 2001.

IT IS SO ORDERED.

Dated this ____ day of September, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER**DISSENT**

I respectfully disagree with the majority. I find that claimant should receive permanent partial general disability benefits under K.S.A. 44-510e. The opinions of Dr. Stein and Dr. Mills are the most persuasive as their examinations were much more recent. In short, claimant has proven he sustained permanent injuries to both his back and right leg. Accordingly, claimant should receive workers compensation benefits for those injuries.

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
P. Kelly Donley, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director